

Serial No. 10/809,856

Atty. Dkt. No.: KAN-002-B

REMARKSClaim Amendments and New Claims:

Pursuant to the entry of this amendment, claims 1-22 are pending in this application. Regarding the specific amendments to the claims:

Claims 2 and 3 are amended herein for clarification purposes only. Applicant respectfully submits that no new matter has been added. Furthermore, as this amendment does not alter the scope of the claim, it should not be construed as a narrowing amendment.

Newly added claims 20-22 define preferred embodiments of the composition of claims 1-5. Support for these claims is found in the specification as originally filed, particularly at p. 1, lines 16-19; p. 3, line 24 - p. 4, line 3; and p. 4, lines 25-26. Applicant respectfully submits that no new matter has been added.

Restriction Requirement:

In the Office Action of April 7, 2006, the Examiner requested that Applicant elect one of the following inventions:

- Group I, claims 1-5, directed to a composition comprising a lipid fraction from *N. sativa* L seeds;
- Group II, claims 6 and 7, directed to a method of treating a pyogenic skin infection with the composition of claim 1;
- Group III, claims 8-10, directed to a method of treating a bacterial infection with the composition of claim 1;
- Group IV, claim 11, directed to a method of treating a skin and soft tissue infection with the composition of claim 1;
- Group V, claim 13, directed to a method of treating a septic infection with the composition of claim 1;
- Group VI, claims 14-16, directed to a method of treating a vaginal disease with the composition of claim 1; and
- Group VII, claims 17-19, drawn to a method of treating a respiratory disorder with the composition of claim 1.

Serial No. 10/809,856

Atty. Dkt. No.: KAN-002-B

Applicant notes that the Examiner did not address claim 12, directed to a method of treating cellulite with the composition of claim 1. However, following the Examiner's reasoning set forth in the previous Office Action, Applicant presumes that she would consider claim 12 to constitute a separate invention as well and refer to it herein as the invention of Group VIII.

So as to be fully responsive to the outstanding Restriction Requirement, Applicant provisionally elects with traverse the invention of Group I, directed to a composition comprising a lipid fraction from *N. sativa* L. seeds and encompassing claims 1-5 and 20-22. However, Applicant respectfully requests that the Examiner reconsider the Restriction Requirement in view of the following comments:

First, under the statute, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions. In this case, the search required for the composition of Group I necessarily overlaps with, and indeed is central to, the search required for the non-elected methods of use thereof (inventions of Groups II-VIII). Accordingly, Applicant respectfully submits that it would not be an undue burden for the Examiner to consider claims 1-22 together in the present application. Further to this position, Applicant notes that the same examiner (Examiner Patricia A. Leith, formerly Patricia A. Patten) searched and examined an analogous claim set, including both composition and methods of use claims, in Applicant's prior application, Serial No. 10/029,885, filed December 31, 2001, now abandoned, which was directed to the same subject matter as the instant application. Therefore, Applicant respectfully requests that the Examiner reconsider the outstanding Restriction Requirement and specifically reconsider examining non-elected claims 6-19 with the elected invention of Group I, claims 1-5 and 20-22.

In addition, Applicant notes that under M.P.E.P. § 806.05(i), where a product claim is found to be allowable (i.e., novel and non-obvious), a process of using must be joined with the product, even if a showing of distinctness can be made between the product and process

Serial No. 10/809,856

Atty. Dkt. No.: KAN-002-B

of using. Accordingly, Applicant requests that the Examiner resume consideration of the process of use claims 6-19 upon an indication of allowability of a claim 1 generic thereto.

CONCLUSION


The outstanding Office Action set a one-month shortened statutory period for response, response being due on or before **May 8, 2006** (May 7th being a Sunday). Accordingly, Applicants submit that this response is timely and no fee is required. However, in the event that further fees are required to enter the instant response and/or maintain the pendency of this application, the Commissioner is authorized to charge such fees to our Deposit Account No. 50-2101.

If the Examiner has any questions or concerns regarding this communication, he is invited to contact the undersigned.

Respectfully submitted,

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